IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5438 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJUSHREE TEXTILES

Versus

MAJOOR MAHAJAN SANGH

Appearance:

Mrs. PJ Davawala for MR KN RAVAL for Petitioner

MR DS VASAVADA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/03/2000

ORAL JUDGEMENT

Learned advocate Ms. Davawala is appearing for the petitioner. Learned advocate Mr. Vasavada is appearing for the respondent. By this petition,the

petitioner has challenged the legality and validity of the impugned order dated 15.3.1995 passed by the Industrial Court at Ahmedabad whereinthe appellate court has up[hold the order dated 5.4.1994 passed by the labour court,Ahmedabad and has directed the petitioner to pay back wages to therespondent badli workman for a period from 1.4.87 to 27.11.1992.

The facts of the present petition, in short , are that the respondent had filed application(T) under theprovisions of theBIR Act through Majur Mahajan Sangh before thelabour court,Ahmedabad challenging the termination order under theprovisionsof section 78 and 79 of the BIR Act. According to the respondent, he was the badli workman in third shift indrawing tenter and thaton 1.4.87, he has been discharged from service without issuing any typeof notice and without initiating any typeof proceedings and has sought relief of reinstatement with full back wages. Thelabour court, after considering the facts and circumstances of the case and also after appreciating the evidence brought before it, allowed the said applicationand has directed the petitioner to reinstate the respondent in service as badli workman and has also granted back wages from 6th April, 1987 to 27th November, 1992. Said awrd has been passed by the labour court on 5th April,1994. Said award was challenged by the petitioner before the Industrial Court,Ahmedabad by filing Appeal IC No. 23 of 1994. The Industrial COurt, after considering the evidence, came to the conclusion that the serviceof the workman has been illegaly terminated by the petitioner with effect from lst April, 1987 and the respondent has worked formore than four years with thepetitioner and,therefore,the industrial court has dismissed the appeal prefered by the petitioner under its order dated 15th March, 1995.Both the said orders have beenchallenged by the petitioner before this court by this petition under Article 226/227 of the Constitution of India.

It has been contended on behalfof the petitioner that in view of the decision of the apex court in case of Prakash Cotton Mills Pvt. Ltd. v/s. Rashtriya Mills Mazdoor Sangh, reported in AIR 1986 SC 1514, that the badli workmen would get work only in absence, temporary or otherwise, of regular employees and they donot have anyguaranteed right of employment and that the badli workmen are really casual employees without any right to be employed and that a badli workman hasno right to claim employment in placeof any absentee employee. Learned advocate appearing for the petitioner has also relied on the decision reported in AIR 1964 GUJARAT 231 wherein it

has been held that the badli workman has no right to get work every day. Learned advocate Mr. Vasavada appearing for the respondent workman has pointed out that this petitioner Manjushree Textiles Mill has already been wound up and the said order has beenpassed by this court and the Official Liquidatorhas been appointed and the mill isnow not working. He has submitted that during thependency of application before the labour court, therespondent workman was reinstated by the petitioner in service with effect from 27th November, 1992 and the labour court has rightly granted wages and that the labour court has not commited any error in granting the wages on the basis of average of four months. He has submitted that the service of the respondent has been illegally terminated by the petitioner mill company and that after termination, the respondent has remained unemployed and no departmental inquiry was initiated before terminating his service and, therefore,thelabour court was right in passing the award in favour of the workman and the industrial court was also right in rejecting the appeal while confirming the impugned award passed by the labour court.

I have considered the submissions made by both the learned advocates. I have also considered the impugned award passed by the labour court as confirmed by the industrial court. I am of the opinion that the labour court has arrived at such conclusion after appreciating the facts and circumstances of the case and the evidence led before it. I am also of the opinion that the industrial court has rightly rejected the appeal of the petitioner. Learned advocate appearing for the petitioner has not been able to point out any jurisdictional error and/or infirmity in the orders impugned before this Court. The labour court has given well reasoned and speaking orders and,therefore, considering all these facts and circumstances of the case, I am of the opinion that this court shuld not interfere with such orders passed by the COurts below in exercise of the powers under Article 227 of the Constitution of India as this court cannot exercise the appellate powers and to reapreciate the evidence as per the decisionof the apex court in caseof Ahmedabad Municipal Corporaqtion versus Virendrakumar Jayantibhai Patel reported in 1998 (1) GLR pg. 17. In view of the above, this petition is required to be dismissed.

In the result, this petition is, therefore, dismissed.RUle is discharged. Ad interim relief granted earlier shall stand vacated. There shall be no order as to costs.

14.3.2000. (H.K.Rathod,J.)

Vyas